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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,060	07/14/2003	Kristen K. Hedstrom	1652.2003-003	6899

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EXAMINER

NOVOSAD, CHRISTOPHER J

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/619,060	<b>Applicant(s)</b> HEDSTROM ET AL.	
	<b>Examiner</b> Christopher J. Novosad	<b>Art Unit</b> 3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-25 and 27-86 is/are pending in the application.
- 4a) Of the above claim(s) 2, 3, 6-22, 24, 25, 28-46, 48-50, 52-69 and 71-86 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 23, 27, 45, 47, 51 and 70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

Claims 4 and 26 have been cancelled

### ***Election/Restrictions***

Applicant's election **without traverse** of Species I (claims 1-3, 5-11, 23-25, 27-33, 45, 47, 49-57 and 68-76) in the reply filed on August 10, 2005 is acknowledged. Applicants' further election without traverse of Subspecies A (claims 5, 27, 51 and 70 under Species I) in the reply is also acknowledged. Accordingly claims 2, 3, 6-22, 24, 25, 28-46, 48-50, 52-69 and 71-86 have been withdrawn from further consideration under 37 CFR 1.142(b) as being directed to nonelected Species and Subspecies.

Accordingly, an action on the merits follows for claims 5, 27, 51 and 70 (drawn to Subspecies A), and for their respective base claims 1, 23, 45 and 47 (drawn to Species I).

### ***Claim Rejections – 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 5, 45 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Smittle (U.S.P. 1,873,495), newly applied.

Smittle discloses a flexible pipe joint or coupling (5, 20) for connecting a pair of like chambers (first and second pipes, not shown, one of which would connect to the screw-threaded male portion (6), and the other of which would connect to the female threaded portion (12)), comprising:

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a mating feature (6, 12) to mate with a first chamber (the first pipe, not shown) and a second chamber (the second pipe, not shown); and

an adjustment feature (20) including a swivel connector (the swivel connector or coupling, Fig. 2) for adjusting the angle between the first chamber (the first pipe, not shown) and the second chamber (the second pipe, not shown) within a range of angles.

With regard to claims 1 and 45, the recitation in the preamble in each of these claims of “for connecting a pair of like corrugated chambers” is a recitation of intended use which is not referred to or otherwise given any significance in the body of each of these claims. For example, while the body of each of claims 1 and 45 recites “a first chamber and a second chamber,” there is nothing whatsoever in either of these claims to indicate that the recited “a first chamber” or “a second chamber” are the same as or related to the “corrugated chambers” recited in the preamble.

Therefore, since the above-noted preamble recitation regarding “a pair of like corrugated chambers” in each of claims 1 and 45 is not given life, meaning and vitality in the body of the claim, it is not accorded any patentable weight. See the following case law in this regard:

A) Generally, the preamble does not limit the claims...the preamble may be limiting when the claim drafter chooses to use both the preamble and the body to define the subject matter of the claimed invention.

Alien Eng'g Corp. v. Bartell Indus., Inc., v. Darragh Co., 63 USPQ2d 1769, 1774 (Fed. Cir. 2002)

B) A statement of intended use or purpose usually will not limit the scope of the claim since such statements merely define the context in which the invention operates. However, preamble language may limit the claim if it recites not merely a context in which the invention may be used, but gives meaning to the limitations recited in the body of the claim.

DeGeorge v. Bernier, 226 USPQ 758, 761 n.3 (Fed. Cir. 1985)

C) "If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or if the claim preamble is 'necessary to give life, meaning, and vitality' to the claim, then the preamble should be construed as if in

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the balance of the claim." Pitney Bowes, Inc. v. Hewlett-Packard Co., 51 USPQ2d 1161, 1165-66 (Fed. Cir. 1999).

With respect to claims 5 and 51, wherein the swivel connector includes "a post member," it is considered that the plug (30) of Smittle meets the broadly recited "post member." In this regard it is to be noted that the claims fail to recite any particular distinguishing structure of the "post member," that would distinguish it over the plug (30) of the reference.

Claims 1, 5, 23, 27, 45, 47, 51 and 70 are rejected under 35 U.S.C. 102(b) as being anticipated by Kimura *et al.* (U.S.P. 5,215,338), newly applied, (hereinafter referred to as Kimura).

With respect to base claims 1 and 45, Kimura (Fig. 6 and col. 9, lines 4-25) discloses a coupler (hollow link element 20, Fig. 6) for connecting a pair of corrugated chambers (hollow outer elements 18 are shown to have corrugated inner chambers in Fig. 6) comprising:

a mating feature (outer spherical convex surfaces 19) to mate with a first chamber and a second chamber (the chambers of the outer elements 18 that connect to each spherical convex end of the hollow inner link or coupler element 20), and

an adjustment feature including a swivel connector (cooperating spherical convex and concave surfaces 19, 17, respectively) for adjusting the angle between the first chamber and the second chamber within a range of angles.

With respect to base claims 23 and 47, the recitation in the preamble of each of the claims of a "leaching field" is neither referred to nor otherwise given significance in the body of each of these claims. Therefore, since the preamble recitation of a "leaching field" is not given life,

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meaning and vitality in the body of the claim, it is not accorded any patentable weight. Again, as noted above, see the following case law in this regard:

A) Generally, the preamble does not limit the claims...the preamble may be limiting when the claim drafter chooses to use both the preamble and the body to define the subject matter of the claimed invention.

Alien Eng'g Corp. v. Bartell Indus., Inc., v. Darragh Co., 63 USPQ2d 1769, 1774 (Fed. Cir. 2002)

B) A statement of intended use or purpose usually will not limit the scope of the claim since such statements merely define the context in which the invention operates. However, preamble language may limit the claim if it recites not merely a context in which the invention may be used, but gives meaning to the limitations recited in the body of the claim.

DeGeorge v. Bernier, 226 USPQ 758, 761 n.3 (Fed. Cir. 1985)

C) "If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or if the claim preamble is 'necessary to give life, meaning, and vitality' to the claim, then the preamble should be construed as if in the balance of the claim." Pitney Bowes, Inc. v. Hewlett-Packard Co. 51 USPQ2d 1161, 1165-66 (Fed. Cir. 1999).

With regard to claims 5, 27, 51 and 70, the broadly recited "post member" is considered met by the stop (21) of Kimura (Fig. 6) since the claims fail to recite any particular distinguishing structure of the "post member," that would distinguish it over the stop means (21) of the reference.

#### **Miscellaneous**

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It is to be noted that claim 54 (a non-elected claim) is dependent on itself.

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

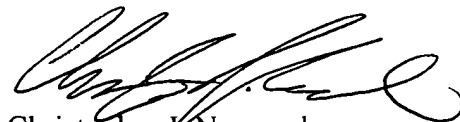
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Novosad whose telephone number is 571-272-6993. The examiner can normally be reached on Monday-Thursday 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached at 571-272-6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher J. Novosad  
Primary Examiner  
Art Unit 3641

April 15, 2006